Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109

ADDITIONAL COMMENTS ON SPECIFIED ISSUES

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SUMMARY

TracFone supports broadband pilot programs modeled on Lifeline as a means to increase broadband adoption among low income households. However, the universal service principles codified at Section 254(b) of the Communications Act indicate that Universal Service Fund support should be limited to service. USF Funds may not lawfully be used to subsidize either equipment or training. While affordable equipment and training would contribute to greater broadband adoption, funding for such equipment and training must come from other sources.

TracFone favors promulgation of a one-per-household rule consistent with the uncodified one-per-household policy which has existed for several years. Importantly, the rule should be sufficiently flexible to enable ETCs to accommodate unusual residential situations, including, for example, homeless shelters and other group living facilities, and non-traditional residential arrangements. No single definition of "household" or "residential address" can cover every conceivable living situation.

If the Commission is seriously committed to eliminating waste, fraud, and abuse of the low-income program, its first action should be to eliminate receipt of Link Up support by wireless ETCs and other ETCs who do not incur costs and impose customary charges for connecting customers to their networks at the customers' principal place of residence. In 2010, wireless ETCs received more than $23 million in Link Up subsidies, none of which was needed to offset the costs of commencing service for a single network connection at a consumer's principal place of residence -- the definition of Link Up set forth in the Commission's rules. Since its establishment in 1987, Link Up funding has been available to ETCs to offset connection costs. Link Up is not intended and was never intended to subsidize other costs such as advertising and marketing, Lifeline enrollment, billing systems, or telephone equipment. Allowing ETCs to receive Link Up funding to offset anything other than actual network

connection charges which are customarily imposed on and paid by all customers constitutes little more than a provision of "free money" to those ETCs receiving that support and is thoroughly inconsistent with the Commission's commitment to eliminate waste, fraud and abuse of the low-income program.

The Commission should abolish the requirement that ETCs verify their Lifeline customers' continuing eligibility by surveying statistically-valid samples of their customers. The sampling method results in de-enrollment of those sampled customers who either cannot verify their continuing eligibility or do not respond to verification requests. However, none of any ETC's non-sampled customers are de-enrolled. Instead, the Commission should require every ETC to contact each of its Lifeline customers annually and have the customers self-certify under penalty of perjury 1) that they remain Lifeline-eligible; 2) they remain head of household; and 3) that they only receive Lifeline-supported service from that ETC. The Commission should require that all Lifeline customers self-certify their continuing Lifeline eligibility but the Commission should not require "full certification" of continuing eligibility since the costs of such full certification are prohibitive and the evidence indicates that full certification is no more reliable than self-certification under penalty of perjury at ensuring that only qualified households continue to receive Lifeline benefits.

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ADDITIONAL COMMENTS ON SPECIFIED ISSUES

TracFone Wireless, Inc. ("TracFone"), by its attorneys, hereby submits its additional comments on the issues set forth in the Commission's August 5, 2011 public notice in this proceeding.[1]

I. Broadband Pilot Programs Should Conform with the Requirements of the Communications Act and the Goals of Universal Service

In the Public Notice, the Commission seeks further comment on broadband pilot programs. TracFone, which itself has been a pioneer in bringing wireless Lifeline service to low-income consumers throughout the United States, long has advocated broadband pilot programs modeled on the Lifeline program for telephone service.[2] TracFone continues to support development of low-income support programs for broadband. However, such programs must be established consistent with the statutory requirements and the limitations on available Universal Service Fund ("USF") support.

As a threshold matter, the statutory principles underlying universal service specify that the primary universal service principle is affordable **service**. Section 254(b) of the

[1] Public Notice - Further Inquiry Into Four Issues in the Universal Service Lifeline/Link Up Reform and Modernization Proceeding, DA 11-1346, released August 5, 2011.
[2] See, *e.g.*, TracFone Wireless, Inc. Petition to Establish a Trial Broadband Lifeline/Link Up Program, filed in WC Docket No. 03-109 and CC Docket No. 96-45, October 9, 2008.

Communications Act (47 U.S.C. § 254(b)), states the principles upon which universal service policy should be based. The first listed principle, codified at Section 254(b)(1), is as follows: "Quality services should be available at just, reasonable, and affordable rates." The operative word is "services." No matter how broadly "services" may be defined, services does not include equipment, nor does it include training. As long ago as 1980, in the seminal Second Computer Inquiry decision,[3] the Commission concluded that provision of customer premises equipment (*e.g.*, telephones, facsimile machines, etc.) is not common carrier service and may not be offered as a service on a regulated, tariffed basis. Neither is training on use of equipment a telecommunications service. TracFone agrees that widespread use of broadband services among low-income consumers would be advanced if subsidized equipment and training were available. However, under existing law those would not be appropriate and lawful uses of universal service funding. Funding for Internet access equipment and training on the use of that equipment should come from sources other than the USF.

In establishing a broadband pilot program, the Commission should learn from the experience of the current Lifeline program. With broadband, as with traditional Lifeline, the Commission will need to balance the need for reasonable measures to ensure that benefits only are provided to qualified low-income households with the need to ensure that the enrollment process is sufficiently consumer friendly so as not to deter qualified low-income households from enrolling. In this regard, the Commission should recognize that self-certification of program-based eligibility combined with periodic verification of continuing eligibility has worked well. The Commission should resist any temptation to require applicants for enrollment

[3] Amendment of § 64.702 of the Commission's Rules and Regulations (*Final Decision*), 77 FCC2d 384, *modified on reconsideration*, 84 FCC2d 50 (1980), *further reconsideration*, 88 FCC2d 512 (1981), *aff'd. sub nom.*, Computer and Communications Industries Association v. FCC, 693 F.2d 198 (D.C. Cir. 1982), *cert. den.* 461 U.S. 938 (1983).

in a broadband pilot program to provide documentation of program-based eligibility. As TracFone and other ETCs have learned, such a documentation requirement will deter many qualified low-income households from applying for supported broadband service which they need and to which they are entitled.

II. The Commission Should Promulgate a Clear, but Flexible, One-Per-Residence Limitation

Since commencing Lifeline service as an ETC in 2008, TracFone has structured its Lifeline program to comply with the requirement that there is a limitation of one Lifeline-supported service per household. TracFone recognizes that certain parties to this proceeding have advocated a rule which would limit Lifeline-supported service, at least wireless Lifeline service, to one per qualified adult, rather than one-per-household. Proponents of such a rule note that wireless service, unlike wireline telephone service, is provided to an individual rather than to a residence and is therefore personal to the subscriber. On the one hand, that argument has merit since one of the most important benefits of wireless technology is mobility -- the ability of consumers to have their telecommunications service with them wherever they go rather than have that service available only at a single location. On the other hand, TracFone is mindful of the fact that the USF is a limited resource and that certain compromises are necessary to ensure that there are sufficient funds available to cover all of the programs supported by the USF. Given the current economic climate and limitations on the fund and the Commission's stated intent to utilize USF resources to fund broadband deployment and adoption, a one-per-household rule is an appropriate balancing, provided that the rule be sufficiently flexible to accommodate non-traditional situations.

As referenced in the Public Notice, on June 1, 2011 TracFone filed an ex parte letter which describes its procedures for implementing the one-per-household limitation. While

TracFone will not further comment at this time on its own procedures, it notes that those procedures have enabled TracFone to limit enrollment in its SafeLink Wireless® program to one per residential address, while still accommodating such unusual circumstances as serving residents of homeless shelters and other group living situations as well as recognizing that some residences are occupied by multiple unrelated households.

Given the variations in living arrangements, it is difficult, if not impossible to craft a single definition of "household" or "residential address" which covers every conceivable living situation. Are two unrelated nuclear families residing in separate portions of the same residential dwelling members of the same household or residing at the same residential address? Are unrelated roommates sharing an apartment or "single family" house residing at the same residential address and, if so, should all such residents be allowed to receive Lifeline-supported service if otherwise qualified? Do unrelated persons residing in group living facilities such as homeless shelters, nursing homes, and assisted living centers qualify for Lifeline? Does the answer to that question depend on whether each resident resides in a separately-identified unit or room? None of these questions are easily answered, nor can they all be addressed by a simple rule.

TracFone has established procedures to address such non-traditional situations. For example, it has made arrangements with operators of certain homeless shelters which enable Lifeline-eligible shelter residents to receive Lifeline benefits if the shelter manager confirms the number of residents at the facility, that a specific Lifeline applicant resides there, and that the applicant is not related to other residents.

In circumstances where it is not clear that an applicant qualifies under a one-per-household rule, TracFone notifies the applicant and affords it an opportunity to provide an explanation and supporting documentation which demonstrates that the applicant is not part of the same household as others residing at the address. Where there are questions whether or not unrelated persons residing at the same street address live in separate quarters (in the absence of apartment numbers, room numbers, etc. included in the address), TracFone instructs applicants to contact the U.S. Postal Service to register the individual quarters as a separate address.

TracFone is gratified that the Commission in the Public Notice has invited comment on its procedures for implementing the one-per-household requirement and it encourages the Commission to promulgate rules which require all ETCs to establish confirmation and escalation procedures so that unusual living situations may be carefully evaluated for compliance with the letter and the purpose for the one-per-household or one-per-residential address requirement.

III. Link Up Support Should be Eliminated for Wireless ETCs and Should be Limited to Subsidizing Portions of the Costs of Connection To Telecommunications Networks Customarily Paid by Consumers of Services Provided Over Those Networks

Throughout the notice of proposed rulemaking in this proceeding,[4] the Commission makes numerous references to the importance of eliminating waste, fraud and abuse of USF resources, especially in connection with the low-income program. Many of the reforms proposed in the notice are directed at reduction and possible elimination of such waste, fraud and abuse. TracFone supports implementation of responsible measures to enable ETCs to detect and prevent waste, fraud and abuse of USF resources and to remedy such waste, fraud and abuse when it occurs.[5]

[4] In the Matter of Lifeline and Link Up Reform and Modernization, *et al* (*Notice of Proposed Rulemaking*), FCC 11-32, released March 4, 2011.

[5] TracFone has demonstrated this commitment by working cooperatively with other ETCs and with the Commission Staff to develop and implement a process for identifying Lifeline customers enrolled in multiple Lifeline-supported programs and de-enrolling customers in cases of such duplicate enrollment. See In the Matter of Lifeline and Link Up (*Report and Order*), FCC 11-97, released June 21, 2011.

It is difficult to imagine a more blatant example of waste, fraud and abuse of USF resources than to allow wireless ETCs -- carriers who incur virtually no costs to connect their customers to their networks -- to receive up to $30 of "free money" per enrolled Lifeline customer through the Link Up program. As will be explained below, the purpose for Link Up is to offset portions of the amounts incurred by ETCs to connect low-income customers to their networks so that households without telephone service can obtain service. This purpose is not advanced by allowing wireless ETCs to create bogus "activation fees," "service commencement charges," or other fees which i) many customers do not actually pay and ii) have nothing to do with covering the costs actually incurred by those ETCs of connecting customers to networks. The goals of the Universal Service program are not advanced and limited USF funds are not prudently utilized when portions of those funds are given to ETCs to cover routine costs of operating their businesses such as marketing and advertising, enrolling customers, setting up billing systems, and general administration.

At the outset, it is important to recognize the magnitude of the waste, fraud and abuse problem caused by Link Up support being paid by the USF to wireless ETCs. According to Universal Service Administrative Company (USAC) data, in 2010, wireless ETCs received more than $23 million in Link Up support -- $19,454,812 non-tribal, and $3.630,064 tribal.[6] $23

[6] Source: USAC FCC Filings, Fourth Quarter Appendices - 2011, L105 - Annual Low Income Amounts by State and Company 2008 through 1Q2011, available at http://www.usac.org/about/governance/fcc-filings/2011/quarter-4.aspx. Of that amount, nearly $18 million went to a single ETC - Nexus Communications, despite the fact that it provides wireless Lifeline service solely by reselling services of facilities-based providers and has never spent a single dime to connect a single customer to its non-existent wireless network. Moreover, as TracFone has explained in prior filings, that company's Lifeline customers normally do not pay any portion of its so-called "service activation fee" not covered by Link Up funding and many of its non-Lifeline customers effectively pay no "service activation fee" at all. See TracFone Wireless, Inc. Petition for Declaratory Ruling, WC Docket No. 09-197, WC Docket No. 96-45, filed December 1, 2010 at 5-9.

million is a lot of money -- money which could be spent on increasing enrollment in Lifeline programs above the current thirty-three percent participation level among qualified low-income households, or money which could used to fund broadband pilot programs.

In considering whether to eliminate the Link Up "gravy train" for those ETCs who claim those funds for bogus "activation" fees -- fees often not paid by customers and never used to cover bona fide network connection costs, it is useful to review the purposes underlying the Commission's adoption of the Link Up portion of the low-income program as well as the Link Up rule itself. Link Up was established by the Commission in 1987 following a recommendation from a Federal-State Joint Board. That Joint Board Recommended Decision proposed that the Commission establish the Link Up program, describing the program, in relevant part, as follows:

> We also recommend that the Commission implement an additional lifeline program that will provide assistance to **offset the costs of initial connection to the telephone network** for low-income households not presently on the network.[7]

Later in 1987, the Commission unanimously adopted the Joint Board recommendation and the Link Up program -- created to offset the costs of initial connection to the telephone network -- was established. The Joint Board's intent, embraced by the Commission, could not have been more articulately stated -- Link Up's purpose was and is to "offset the costs of initial connection to the telephone network."

Link Up as defined in the Commission's rules is consistent with that purpose articulated by the Joint Board and adopted by the Commission. Section 54.411(a)(1) of the Commission's rules (47 C.F.R. § 54.411(a)(1)) defines Link Up, in relevant part, as "[a] reduction in the carrier's customary charge for commencing telecommunications service **for a single connection at a consumer's principal place of residence**." (emphasis added). Stated simply, Link Up

[7] MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board (*Recommended Decision and Order*), FCC 87J-1, released March 31, 1987, at ¶ 5 (emphasis added).

funding is not available to offset any charge which an ETC deems to be "customary." In order to qualify for Link Up reimbursement, the charge must not only be customarily imposed on all customers; it must be for the specific purpose of providing "a single connection at a consumer's principal place of residence." When a wireless ETC -- whether facilities-based or reseller -- imposes an activation fee, service commencement charge or any other fee at the outset, that charge is not imposed by the ETC for the purpose of recovering the costs it incurs for providing a telecommunications connection at the consumer's principal place of residence. Indeed, other than for billing purposes (if a billed service) and to comply with Lifeline enrollment requirements, there would be no need for the ETC even to inquire about the location of the consumer's principal place of residence, let alone, actually provide a telecommunications connection at that location.

In contrast, providers of wireline telephone services do provide telecommunications connections at consumers' principal places of residence, and the costs of providing those connections can be substantial. Local exchange carriers must send a truck (driven by a salaried employee) to the consumer's residence, install network equipment at the premises, and then connect that equipment to the telephone network facilities. Wireless carriers do not incur comparable "connection" costs. As anyone who has ever purchased a wireless device and commenced service knows, the activation process takes place at the carrier's premises, not the customer's. A service technician or sales person removes the wireless device from its box, punches a few digits, makes a test call to confirm that it is working, and hands the device to the customer. This process routinely takes no more than a few minutes.[8] The costs of that activation

[8] Some wireless carriers will perform additional functions at consumer request as part of the activation process, such as transferring the consumer's contact list to the new device. However, carriers typically assess separate charges for those functions.

process are hardly comparable to a wireline provider's connection process which includes a "truck roll" to a customer premises, installation and connection of the necessary network equipment.

Many wireless service providers do not impose any activation charges for that process. TracFone has approximately eighteen million customers, of which about three and one-half million are Lifeline customers, the remainder are non-Lifeline customers. Not one of those customers -- Lifeline or non-Lifeline -- has been charged an activation, service commencement or connection charge. TracFone is able to operate efficiently and profitably without imposing activation fees on its customers and without asking for money from the USF to cover portions of its costs for activating those of its customers who are Lifeline customers. Another major wireless Lifeline provider -- Virgin Mobile (owned by Sprint) -- also does not subject its customers to such charges. Neither is TracFone charged service commencement, connection or activation fees by any of its underlying facilities-based network providers. So far as TracFone is aware, underlying network providers do not subject their wholesale mobile virtual network operator customers to activation fees or service commencement charges.

Those wireless ETCs who have been claiming and receiving Link Up support often assert that they need that support to provide Lifeline service. However, they normally claim that the funds are needed for purposes other than connection to a network at the consumer's principal place of residence. Some have claimed they need Link Up support to offset their costs of marketing, advertising and outreach; some have claimed that Link Up funding covers portions of the Lifeline enrollment process, or to cover the costs of establishing their billing and other record keeping systems. However, those are not costs that the Link Up program was established to cover. Link Up is to offset a portion of an ETC's costs of connecting customers to the network at the consumers' principal places of residence. If a wireless carrier wishes to subject its customers to activation fees or service commencement charges, and if it believes that the competitive marketplace will allow for such charges, it is certainly free to do so. However, it is not entitled to have those pricing decisions covered by the USF through Link Up.

Neither is there any justification for providing Link Up funding to subsidize the costs of handsets. TracFone provides every Lifeline customer with a handset at no charge to the customer. The costs of acquiring and shipping those handsets are borne by TracFone, not by the Universal Service Fund. Nor should Link Up support be available to offset the costs of customer eligibility determinations and enrollment. Those are costs of doing business which should be borne by those ETCs desiring to participate in Lifeline, not by the USF.

If the Commission is seriously committed to reducing waste, fraud and abuse of USF resources, limiting Link Up support to offsetting portions of the costs of connecting low-income households to telecommunications networks at their principal places of residence, as expressly required by Section 54.411(a)(1) of the Commission's rules would be an excellent place to start.

IV. The Commission Should Eliminate the Requirement that ETCs Conduct Random Sampling Verification of their Lifeline Customers' Continuing Eligibility. It Should Instead Require that all Lifeline Customers Self-Certify Annually Their Continuing Lifeline Eligibility

The Public Notice also invites further comment on suggested changes to the random sampling techniques currently required of ETCs by the Commission to verify their Lifeline customers' continuing eligibility to receive Lifeline benefits. In several prior submissions in this proceeding, TracFone has explained why random sampling is not an effective means for identifying and eliminating those Lifeline customers who are no longer Lifeline-eligible.[9] Given the inherent inadequacy of any verification requirement based on annually surveying a

[9] See, *e.g.*, Ex parte letter dated August 24, 2011 at 3-4; Reply Comments filed Mary 10, 2011, at 4-6.

statistically-valid random sample, proposals to modify or refine the sampling methodology is a bit like proverbially "rearranging the deck chairs on the Titanic."

As TracFone has described in prior filings, the problem with any random sampling approach to annual verification is that only those sampled customers who either are unable to demonstrate their continuing Lifeline eligibility or who do not respond to verification requests will be de-enrolled from Lifeline. None of an ETC's non-surveyed customers will be de-enrolled even though it is highly probable that some portion of the customers not surveyed would not respond or would not verify continued Lifeline eligibility if they were surveyed. In short, if five percent of an ETC's Lifeline customers are subject to random sampling, then those sampled customers who either are unable to verify their continuing eligibility or who fail to respond to requests to do so will be de-enrolled. However, all of the ETC's remaining 95 percent of its Lifeline customer base will remain enrolled without regard to whether some portion of that remaining 95 percent not sampled would not be able to verify their continuing eligibility or would not respond to verification requests.

As an alternative, TracFone has proposed that all ETCs be required to do annually what the Commission has required TracFone and other ETCs subject to forbearance to do -- contact every Lifeline customer and have the customer self-certify under penalty of perjury that i) they remain head of household; and ii) only receive Lifeline-supported service from that ETC.[10] In addition to those two self-certifications, all ETCs should be required to have each of their Lifeline customers self-certify that they remain Lifeline-eligible, either though participation in a qualifying program or based on income. Based on TracFone's provision of Lifeline service as an ETC in more than thirty states, it has concluded that such self-certification of the entirety of each

[10] See, *e.g.*, Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1(A) and 47 C.F.R. § 54.201(i), 20 FCC Rcd 15095 (2005).

ETC's customer base will be more accurate and will result in the de-enrollment of many more no-longer-qualified Lifeline customers than will verification of a statistically-valid random sample. Moreover, this process will be far more efficient for each ETC.

Importantly, TracFone recommends that each ETC's entire Lifeline customer base have its Lifeline eligibility verified annually based on self-certification as described in the preceding paragraph. The Commission should not require ETCs to obtain from all Lifeline customers documentation of continuing eligibility (so-called "full certification"). The costs of full certification are prohibitively expensive and, according to data compiled by TracFone, is no more reliable than self-certification under penalty of perjury.[11]

Respectfully submitted,

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[11] See TracFone's August 24 ex parte letter filed in this proceeding where those data are described.